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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISO, CA Date: FEB 02 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a Motion to Reopen. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on July 18, 1986. The applicant was initially present in the United States without a lawful admission or parole in 1981. The applicant last entered the United States under advance parole on July 6, 1997. The applicant married a native of Mexico in Riverside, California in August 1986, and his wife became a naturalized U.S. citizen on September 24, 1996. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) approved on April 4, 1996. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

On appeal, counsel stated that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] used an incorrect standard of hardship in evaluating the evidence presented and in deciding the waiver. Counsel submitted an affidavit by the applicant's wife in which she cites numerous factors of hardship.

On motion to reopen, counsel states that CIS timely received the applicant's appeal brief and additional evidence from counsel, but that these materials were not considered in the AAO decision dated August 21, 2002. Counsel states that it appears that the office in San Francisco, California failed to send the brief and attachments to the AAO when the appeal was forwarded.

On motion to reopen, the district director forwards counsel's brief as well as an affidavit of the applicant's spouse, dated September 19, 2002; an affidavit of the applicant, dated September 19, 2002; two letters from the physician treating the applicant's spouse, dated September 16, 2002 and September 9, 2002, respectively; a medical report for the applicant's spouse, dated September 13, 2002 and a statement from the father of the applicant's spouse, dated September 9, 2002. The record also contains an affidavit of the applicant, dated October 16, 2001; a brief in support of appeal from counsel, dated November 14, 2001; an affidavit of the applicant's spouse, dated November 14, 2001; a copy of a Department of State country report on human rights practices for Mexico; copies of financial and tax documentation for the couple; verification of employment for the applicant's spouse, dated October 4, 2001; a letter from the applicant, dated November 26, 1997; copies of the U.S. birth certificates for the applicant's three children; a copy of the naturalization certificate for the applicant's spouse; a copy and translation of the Mexican birth certificate of the applicant and a copy of the marriage certificate for the couple. The entire record was reviewed and considered in rendering a decision on the motion to reopen.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation,

> or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to procure admission into the United States on July 18, 1986, by presenting a U.S. birth certificate belonging to another person and falsely claiming to be a United States citizen. Prosecution was declined and he was fingerprinted and returned to Mexico.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico. Counsel points to the uncertainty of the availability of medical care in Mexico; the lack of family ties in Mexico and country conditions in Mexico as evidence of extreme hardship. *See* Motion to Reopen on Decision Denying Application for Waiver of Grounds of Inadmissibility Under Section 212(i) of INA, 8 USC 1182(i) and Dismissing the Appeal, dated September 19, 2002. The applicant's spouse states that her children would be deprived of educational opportunities in Mexico and that they have not been exposed to the Spanish language. The applicant's wife also states that she assists in caring for her father who suffers from diabetes and would be unable to continue caring for him if she departs to Mexico with the applicant. *See* Affidavit of [redacted] dated September 19, 2002. The AAO notes that hardship suffered by the applicant's children and the father of the applicant's wife is irrelevant to waiver proceedings under section 212(i) of the Act. Any hardship suffered by the applicant's children and the father of the applicant's wife is only considered in so far as it contributes to hardship suffered by the applicant's spouse.

While counsel asserts extreme hardship if the applicant's spouse departs the United States, the record does not demonstrate extreme hardship if the applicant's spouse remains in the United States. Counsel contends that

the applicant's spouse will suffer financial hardship as a result of the loss of her spouse's income. The U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record does not establish that the applicant will be unable to financially contribute to the welfare of his family from a location outside of the United States.

Counsel also indicates that the applicant's wife has developed a gastric ulcer. The letters submitted by a physician treating the applicant's wife indicate that she is prescribed medication to counteract her anxiety and that she is believed to have a gastric ulcer. *See* Letters from [redacted] dated September 16 and September 9, 2002. The record does not establish a final diagnosis for the applicant's apparent ulcer nor does it establish the necessary treatment for her condition. The record does not demonstrate that the medical condition of the applicant's wife is incapacitating or requires constant care.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The previous decision of the AAO, dated August 21, 2002 dismissing the appeal is upheld.